Office - Supreme Court, U.S.
FILED
NOV 16 1982
ALEXANDER L. STEVAS,
CLERK

No. 82-458

In the Supreme Court of the United States

OCTOBER TERM, 1982

TULARE LAKE CANAL COMPANY AND TULARE LAKE BASIN WATER STORAGE DISTRICT, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

REX E. LEE
Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 633-2217

TABLE OF AUTHORITIES

Page

Cases:

Bryant v. *Yellen*, 447 U.S. 352 ..... 2, 3

California v. *United States*, 438 U.S. 645 ..... 2, 3

United States v. *Alaska Steamship Co.*, 253 U.S. 113 4

United States v. *Tulare Lake Canal Co.* *(Tulare I)*, 535 F.2d 1093, cert. denied, 429 U.S. 1121 ..... 2, 3

Statutes:

Flood Control Act of 1944, ch. 665, Section 10, 58 Stat. 901 2

Omnibus Adjustment Act of 1926, ch. 383, Section 46, 44 Stat. 964, 43 U.S.C. 423e 1

Pub. L. No. 97-293, 96 Stat. 1261 3

Title II, Reclamation Reform Act of 1982, 96 Stat. 1263 *et seq.* :

Section 212(a), 96 Stat. 1269 3
Section 212(a)(1), 96 Stat. 1269 ..... 3, 4
Section 212(a)(2), 96 Stat. 1269 ..... 3, 4

In the Supreme Court of the United States

OCTOBER TERM, 1982

No. 82-458

TULARE LAKE CANAL COMPANY AND TULARE LAKE BASIN WATER STORAGE DISTRICT, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

Petitioners bring before this Court a dispute of some 30 years' duration concerning the applicability of the 160-acre limitation contained in the federal reclamation laws[1] to owners of land who receive irrigation water storage benefits from the Pine Flat Dam on the Kings River in California. After nearly 20 years of litigation, Congress has recently resolved the question in petitioners' favor. We therefore suggest that the Court grant the petition, vacate the judgments below, and remand to the district court with instructions to dismiss the case.

[1]Section 46 of the Omnibus Adjustment Act of 1926, ch. 383, 44 Stat. 649, 43 U.S.C. 423e, prohibits the delivery of project water from a federal reclamation project to "irrigable land held in private ownership by any one owner in excess of one hundred and sixty irrigable acres" unless the owner holding such excess lands executes "valid recordable contracts for the sale of such lands" at a price to be appraised "without reference to the proposed construction of the irrigation works • • •."

1. In Section 10 of the Flood Control Act of 1944, ch. 665, 58 Stat. 901, Congress authorized the Corps of Engineers to construct the Pine Flat Dam for flood control and other purposes. The project, which was completed in 1954, confers substantial benefits upon water users in the area by allowing them to store water for eventual release during periods in which the water is needed most for irrigation. Following completion of the project, however, the water users and the government were unable to agree on a permanent repayment contract. The water users maintained that the excess land requirements of the reclamation laws did not apply to the Pine Flat Project or, in the alternative, that those requirements ceased to be effective when the water users made an advance lump sum payment of the project costs allocated to irrigation. Because the government disagreed with the water users' interpretation of the reclamation laws, the United States commenced this litigation in 1963 to resolve the dispute.

2. The district court agreed with petitioners on both of their statutory arguments and entered judgment in their favor in 1972 (Pet. App. 1-21; 37-39). The court of appeals reversed, holding for the government on both of the statutory issues. *United States* v. *Tulare Lake Canal Co. (Tulare I)*, 535 F.2d 1093 (9th Cir. 1976), cert. denied, 429 U.S. 1121 (1977).

The case was then returned to the district court for resolution of various constitutional challenges advanced by petitioners and not decided in the *Tulare I* proceedings. The district court entered judgment in favor of the government and petitioners appealed. While the appeal was pending, this Court handed down its decisions in *California* v. *United States*, 438 U.S. 645 (1978), and *Bryant* v. *Yellen*, 447 U.S. 352 (1980). Petitioners asserted that these decisions undermined the soundness of *Tulare I*, and they requested the court of appeals to recall its mandate. The

court of appeals consolidated that motion with the pending appeal. The court concluded that *California* and *Yellen* did not affect the conclusions reached in *Tulare I* (Pet. App. 23-30), and it also rejected petitioners' constitutional arguments (*id.* at 30-32).

3. We believe that the decision below was correct at the time it was rendered. After the petition for a writ of certiorari was filed, however, Congress enacted new legislation that moots the questions presented by the petition and requires that the judgments below be vacated.

On October 12, 1982, the President signed into law Pub. L. No. 97-293, 96 Stat. 1261. Title II of the new statute, known as the "Reclamation Reform Act of 1982," amends and supplements the federal reclamation laws. Section 212(a) of the Act provides (96 Stat. 1269):

> Notwithstanding any other provision of law, neither the ownership or pricing limitation provisions nor the other provisions of Federal reclamation law, including this title, shall be applicable to lands receiving benefits from Federal water resources projects constructed by the United States Army Corps of Engineers, unless—
>
> (1) the project has, by Federal statute, explicitly been designated, made a part of, or integrated with a Federal reclamation project; or
>
> (2) the Secretary [of the Interior], pursuant to his authority under Federal reclamation law, has provided project works for the control or conveyance of an agricultural water supply for the lands involved.

The Pine Flat Project is a "Federal water resources project[] constructed by the United States Army Corps of Engineers," and it does not fall within the exceptions contained in Section 212(a)(1) or (2). Accordingly, the ownership limitation provisions of the reclamation laws are no longer applicable to this Project. "Where by an act of the parties, or a subsequent law, the existing controversy has come to an end, the case becomes moot and should be treated accordingly." *United States* v. *Alaska Steamship Co.*, 253 U.S. 113, 116 (1920).

It is therefore respectfully submitted that the petition should be granted, the judgments below vacated, and the case remanded to the district court with instructions to dismiss in light of Congress' action.

REX E. LEE
Solicitor General

NOVEMBER 1982

DOJ-1982-11